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SEP 1 1988

August 22, 1988

Ms. Barbara T. Reid, Director
Municipal Services Division
Department of Revenue Administration
61 South Spring Street
Concord, New Hampshire 03301

Re: Correction of 1987 Hillsborough County Tax
Apportionment

Dear Barbara:

By memorandum following several meetings earlier this year, you have requested the opinion of this office as to the propriety of a proposed adjustment to the 1988 Hillsborough County tax apportionment, to correct the 1987 miscalculation thereof by the Department of Revenue Administration (Department). Specifically, the Department seeks authorization for a 1988 tax adjustment which will reduce the apportionment for those towns which overpaid the county tax in 1987 by the amount of overpayment, and increase by a corresponding assessment the amount to be paid by the cities of Manchester and Nashua which were both underassessed by the Department in 1987. Because the Department, which is solely responsible for the apportionment of county taxes among the municipalities, possesses general supervisory authority over all local tax assessing jurisdictions, and in view of its broad discretion in the implementation of tax legislation, this office is of the opinion that the Department is authorized to effectuate the proposed adjustment. We further determine that in view of the



fact that legislative initiatives to redress the miscalculation were not ultimately adopted, the Department's proposal offers the most practical and equitable response to the error.

The Department is directed by statute to apportion county taxes among the municipalities within each county. RSA 76:1 (Cum. Supp. 1987) requires that the Commissioner of Revenue make the apportionment on the basis of equalized valuation of municipal property. This responsibility is reiterated in the Department's comprehensive statute, at RSA 21-J:3, XIII (Cum. Supp. 1987), which directs the Department to "equalize annually the valuation of the property in the several towns ... so that any public taxes that may be apportioned among them shall be equal and just." Equalization is essential because county taxes must be paid by the municipalities, the valuations of properties within which are not uniformly updated. Its equalization of valuation allows the Department to apportion county taxes equitably among the towns on the basis of comparable property values.

This miscalculation of the 1987 equalization figure for Manchester and Nashua, producing an underestimation of value for the two cities, resulted in an under-apportionment to them of county taxes, and a corresponding fractional over-apportionment to all other municipalities in Hillsborough County. Since the error was not discovered before the municipalities paid their county assessment, the relative contributions of the several municipalities to the total tax as established by the 1987 Hillsborough County Convention were not "just and equitable." See RSA 24:13, 14 (Cum. Supp. 1987).

While sponsors in both houses of the 1988 legislature sought enactments which would have variously subsidized or financed the two cities' tax shortfall, no legislative solution was ever attained. See, e.g., HB 1129, 17 Feb. 88 House Record, at 1526. At the close of the legislative session, the Hillsborough County municipalities were without an acceptable remedial proposal that differed from the Department's original determination, which was rendered after consultation with this office.

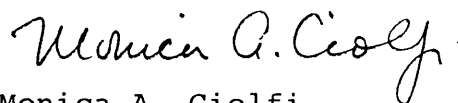
The Department currently proposes to rectify the disproportional contributions by adjusting the 1988 apportionment to provide credits for prior overpayments and additional assessments for underpayments. Although the apportionment statute, RSA 76:1 (Cum. Supp. 1987), and the equalization provision, RSA 21-J:3, XIII (Cum. Supp.) do not expressly provide remedial procedures, neither do they present

any bar to the contemplated adjustment. In such a case, an executive agency with broad statutory authority for policy implementation is endowed with powers necessary to reasonably effectuate corrections for action properly taken within its delegated responsibility "in pursuance of the law." See Appeal of Monsieur Henri Wines, Ltd., 128 N.H. 191, 194 (1986).

Accordingly, this office determines that the Department of Revenue Administration is authorized to make an appropriate adjustment to the 1988 Hillsborough County tax apportionment to redress the over-and under-payment thereof occasioned by its miscalculation of the 1987 apportionment.

I trust that the foregoing is responsive to your inquiry. Please do not hesitate to contact this office if we can be of further assistance.

Sincerely,



Monica A. Ciolfi
Attorney

MAC:ab
#88-040